

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**July 2, 2014**

This meeting was called to order at 6:01 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Russell Moore, Scott Spendlove, Necia Christensen, and Sandy Naegle

**Those Absent:**

William Whetstone

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Nichole Camac

**WEST VALLEY CITY LEGAL DEPARTMENT**

Brandon Hill, Assistant City Attorney

**AUDIENCE:**

Approximately two (2) persons were in the audience.

## **VARIANCES**

### **B-4-2014**

#### **Holiday Oil – NCU Determination and Variance 3210 West 3500 South C-2 Zone**

#### **REQUEST:**

Mr. Jerry Wagstaff, representing Holiday Oil, has filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination for an existing pole sign and a variance from Title 11-7-101 of the West Valley City Code. The non-conforming use request will validate the legality of the existing pole sign. Title 11 requires that any nonconforming sign not be altered or modified unless the sign is changed so as to conform to all provisions of the Code.

The applicant would like to add electronic messaging to an existing pole sign which would necessitate bringing down the pole sign to conform to current ordinances. The property is located at 3200 West 3500 South and is zoned 'C-2' (general commercial).

#### **BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends general commercial land uses.

*Staff would like to handle each request separately, beginning with the non-conforming use determination.*

- ☐ The subject property is known as parcel Number 15-29-480-058. It is located on the northwest corner of 3200 West and 3500 South. A conditional use was granted by the City in 1988 for the existing Holiday Oil convenience store and gas station.
- ☐ A sign permit was granted by the City in July 1989. The permit was for two pole signs with frontage along 3200 West and 3500 South. Although a building permit was issued by the City for the pole signs, they do not conform to today's standards. Staff believes that in order to pursue the variance request, it is necessary for the Board to review the non-conforming use of a pole sign on less than 10 acres. Once that has been done, the Board can evaluate the variance request.
- ☐ To help the Board determine whether the existing pole signs are non-conforming, a copy of the building permit is attached to the staff report. Although a site plan could not be found, it is clear that two pole signs were issued by the City for the property in question. These signs have existed at these locations for approximately 25 years.
- ☐ The City also has a sign inventory with photos dating back many years. This site is well catalogued with the existing signs on 3200 West and 3500 South. At the time the sign permit was issued, the sign ordinance allowed pole signs on properties less than 10 acres. However, that ordinance was changed in 2001. Based on the information we do have, staff believes that the pole signs were clearly issued in accordance with the City's ordinances at the time.

#### **Variance Request:**

- ☐ As stated previously, Mr. Wagstaff is requesting a variance from Title 11 of the City's Code. The specific section of ordinance that Mr. Wagstaff is seeking relief is a provision that stipulates that

a non-conforming sign shall not be altered, reconstructed, raised moved, placed or extended, or enlarged, unless said sign is changed so as to conform to all provisions of this Title. The applicant would like to remove the older changeable copy and replace it with LED signage. As this is a modification, a variance would be needed.

- ☐ The pole signs are nearly 25 years old, and use changeable copy. This requires employees to physically remove the copy almost on a daily basis. According to the applicant, this is challenging for employees and at times can be dangerous with falling letters and numbers along with placing employees out in areas near moving traffic. The LED system is much safer and is more aesthetically pleasing.
- ☐ While discussing the potential variance request with Mr. Wagstaff, he informed staff that he would be willing to remove the second pole sign near the northern property line as a consideration for the variance. A monument sign would be installed replacing the pole sign at that location.
- ☐ As staff met with the applicant to discuss the variance request, the five criteria were mentioned and reviewed. The applicant believes that modifications to his property resulting from the widening of 3500 South would make a monument sign ineffective at the corner. These changes include a center running bus lane, which limits turning movements in and out of the business and multiple utility cabinets and boxes.
- ☐ Staff asked about other locations that may allow for a monument sign. The applicant explained that in addition to the utility boxes at the corner, similar boxes are located further to the west along 3500 South. The applicant also explained that a drainage basin located along 3500 South would further limit possible locations. Mr. Wagstaff explained that sight distance requirements from the 3500 South ingress/egress would also limit the signs location.
- ☐ Mr. Wagstaff pointed out that most corner convenience stores have a corner sign which he believes is valuable to these types of businesses. If a monument sign was located at the corner with limited visibility due to the utility cabinets, the applicant believes he is being denied a substantial property right possessed by other types of businesses in similar zoning districts.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a sign permit with the Planning and Zoning division for approval.

☐ **ORDINANCE SUMMARY:**

**Title 11-7-101** A non-conforming sign shall not be altered, reconstructed, raised moved, placed or extended, or enlarged, unless said sign is changed so as to conform to all provisions of this Title. All alterations shall require conformance to the provisions of this Ordinance including any physical changes to the sign panel or the sign cabinet itself...

**Section 7-18-107** of the West Valley City Land Use Development and Management Act outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Boards decision to grant a variance would be illegal if the required statutory findings were not made.

**Steve Lehman presented the application.**

**Discussion:** Necia Christensen clarified that the first step is to identify whether the signs are non-conforming and then to grant/deny a variance to allow the applicant the ability to add the LED screen to the sign. Steve replied yes. Sandy Naegle asked if there are bushes in the location of the proposed monument sign along 3200 W. Steve replied yes and added that Questar has a regulator building as well. He indicated that the sign should still be visible and the applicant can berm or use other methods of ensuring the sign will be easily seen and functional. Steve added that the applicant is concerned about Questar service trucks damaging the sign as well but he will find a way to work this potential issue out.

**Applicant**

Jerry Wagstaff

**Jerry Wagstaff**

Mr. Wagstaff stated that his company started in West Valley City and has done well with over 50 stations currently operating. He stated that his greatest concern is employee safety. He indicated that it is difficult to change the current sign on the busy corner. Mr. Wagstaff stated that most of his other locations have LED signs now. He stated that he is requesting the pole sign remain due to the large amount of utility boxes that were placed on his property. He indicated that a monument sign would be impossible to see. Mr. Wagstaff stated that he is concerned about Questar trucks damaging the sign on 3200 West and is also concerned about irrigation issues on this side. He indicated that he will hopefully work these issues out.

**Discussion:** Russell Moore asked why this application would be considered a variance. Brandon Hill replied that the non-conforming use allows the signs to continue as they are. He indicated that the variance would then grant the sign to become LED since the sign code would require that the sign be brought down and replaced with a monument sign.

There being no further discussion regarding this application, Chairperson Christensen called for a motion regarding the non-conforming use.

Mr. Spendlove moved for approval.

Ms. Naegle seconded the motion.

A roll call was taken.

|                         |     |
|-------------------------|-----|
| Mr. Moore               | Yes |
| Mr. Spendlove           | Yes |
| Ms. Naegle              | Yes |
| Chairperson Christensen | Yes |

**Motion Carries - B-4-2014– Unanimous Vote regarding the non-conformance use**

**Discussion:** Chairperson Christensen stated that the Board will need to evaluate the 5 criteria and determine if Mr. Wagstaff's application qualifies for a variance.

**1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Chairperson Christensen asked if a hardship can be based on the business. Brandon replied that it cannot be based solely on economics such as compliance costing too much money, etc. He indicated that every business has the right to a sign and due to circumstances not caused by the applicant a monument sign wouldn't be functional at this location. Mr. Moore added that advertising is merely a potential for economic income and not a direct source of acquiring money.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Moore stated that the installation of utility boxes and the expansion of 3500 S for BRT has placed a special difficulty for signage on the property. Chairperson Christensen agreed and added that there are an unusual amount of utility boxes.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Chairperson Christensen stated that the numbers on the sign are difficult to change on the busy corner and this does pose a safety hazard. Mr. Spendlove added that effective advertising is granted to all businesses in the City and it's only fair that Mr. Wagstaff is given the same opportunity.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Chairperson Christensen stated that the General Plan is not being impacted with this sign. Mr. Moore added that it is likely a benefit to public interest since it will be safer for people driving to view a pole sign on this corner instead of a monument.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Chairperson Christensen stated that the applicant has made a compromise by bringing down one

pole sign on 3200 W. She added that the LED will look better than what is currently there. Mr. Spendlove stated that everything will be brought into compliance as much as possible.

There being no further discussion regarding this application, Chairperson Christensen called for a motion for the variance.

Mr. Moore moved for approval with the understanding that the pole sign on 3200 W will be removed and replaced with a monument sign that meets the current ordinance.

Mr. Spendlove seconded the motion.

A roll call was taken.

|                         |     |
|-------------------------|-----|
| Mr. Moore               | Yes |
| Mr. Spendlove           | Yes |
| Ms. Naegle              | Yes |
| Chairperson Christensen | Yes |

**Motion Carries - B-4-2014– Unanimous Vote regarding the variance**

### **OTHER**

The minutes from **April 16, 2014** were **approved**.

There being no further business the meeting adjourned at 6:34 p.m.

---

Nichole Camac, Administrative Assistant